NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: RICHARD ALLEN RUDNICK, Debtor, ---------- PIO ESCAMILLA; BENITA CASTILLA VILLASENOR, Appellants, v. RICHARD ALLEN RUDNICK, Appellee.	No. 02-16865 BAP No. EC-01-01154-MoRyH MEMORANDUM*

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Montali, Ryan, and Hollowell, Bankruptcy Judges, Presiding

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Submitted December 3, 2003[**]
San Francisco, California

Before: SCHROEDER, Chief Judge, D.W. NELSON, and RYMER, Circuit Judges.

Escamilla and Villasenor jointly appeal the judgment of the Bankruptcy Appellate Panel (BAP), which affirmed the bankruptcy court's determination that the debt owed to Escamilla and Villasenor by Rudnick was subject to discharge in Rudnick's bankruptcy proceeding. The debt arose from a Texas state court judgment against Rudnick. After a two-day trial, the bankruptcy judge found that Escamilla had not proven that the debt arose from fraud, and the debt was therefore subject to discharge. Escamilla and Villasenor argue that the bankruptcy court's decision should be reversed because it was inconsistent with the jury's findings in the prior action in Texas.

We have jurisdiction pursuant to 28 U.S.C. § 158(d), and we affirm.

I

Rudnick argues that Escamilla and Villasenor waived the right to appeal the bankruptcy court's decision by failing to file an interlocutory appeal. We

[**] This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

disagree, as the issues now raised present purely legal questions. *See Pavon v. Swift Transp. Co.*, 192 F.3d 902, 906 (9th Cir. 1999).

II

Escamilla and Villasenor argue that the bankruptcy court should have found that Rudnick's debt was exempt from discharge because the bankruptcy court was bound by the Texas judgment under the doctrine of claim preclusion (res judicata). However, "nondischargeability of a debt is an entirely separate determination with its own elements under [the bankruptcy statute] which require more than the establishment of liability . . . ." Accordingly, principles of res judicata do not apply. *Berr v. Fed. Deposit Ins. Corp. (In re Berr)*, 172 B.R. 299, 305 n.4 (9th Cir. BAP 1994).

III

Nor does issue preclusion bar adjudication of whether Rudnick committed fraud. A creditor must prove justifiable reliance on the debtor's conduct, *see Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000), but this issue was not actually litigated in the Texas action. The jury was not instructed on, and the verdict did not include a

determination on, the element of justifiable reliance; indeed, the Texas Court of Appeals indicated that reliance was not required and was irrelevant to the judgment.

Rudnick's liability as a partner was not actually litigated in Texas either. Beyond this, the bankruptcy court did not fail to recognize that a partner may be liable for the fraudulent acts of his co-partners so as to make a debt nondischargeable. It simply found no factual basis for discharging Rudnick's debt.

IV

Escamilla and Villasenor contend that the bankruptcy court's findings were clearly erroneous in several respects, which boil down to the fact that the bankruptcy court's judgment is different from the Texas judgment. Because the Texas judgment has no preclusive effect on the bankruptcy proceeding, the bankruptcy court had to make its own findings in order to determine whether Rudnick's debt was exempt from discharge under 11 U.S.C. § 523(a). The findings that the court made are well supported by the record.

AFFIRMED.